J-A17009-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LYNN A. VAN TASSEL,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
ARTHUR R. VAN TASSEL,	:	
	:	
Appellee	:	No. 125 WDA 2012

Appeal from the Order Entered November 17, 2011,
In the Court of Common Pleas of Lawrence County,
Civil Division, at No. 20288 of 2008, D.S.B.

BEFORE: SHOGAN, LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY SHOGAN, J.: FILED: October 9, 2013

Lynn A. Van Tassel ("Mother") appeals *pro se* from the order entered November 17, 2011, imposing a sentence of incarceration for ninety days, entering judgment in favor of Arthur F. Van Tassel ("Father") for $9,230.90 plus interest, and awarding additional attorneys' fees of $420.00 to Father's counsel.[1] We affirm.

Mother's underlying support case began in 2007. Following a hearing on June 23, 2008, the trial court found Mother in contempt of its support orders. Order of Court, 6/23/08. To purge the contempt, Mother was

[1] This is the first of three contemporaneous appeals filed by Mother. The other two appeals are from an order denying Mother's petition to open her support case, 1056 WDA 2012, and an order directing her to pay child support, 2002 WDA 2012. Father did not file a brief in any of the three appeals.

required to pay $2,385.00 in attorneys' fees. Mother unsuccessfully challenged the June 23, 2008 contempt order in the Pennsylvania appellate and federal courts. ***Van Tassel v. Van Tassel***, 1227 WDA 2008, ___ A.2d ___ (Pa. Super. September 10, 2008) (unpublished memorandum), *affirmed*, 964 A.2d 896 (Pa. 2009); ***Van Tassel v. Lawrence County Domestic Relations Sections***, 659 F.Supp.2d 672 (W.D. Pa. 2009), *affirmed*, 390 Fed. Appx. 201 (3rd Cir. 2010). Mother did not purge the contempt by paying the attorneys' fees.

Over the next several years, Mother continued to litigate various trial court rulings and to disregard trial court orders, which resulted in additional findings of contempt and imposition of sanctions.[2] Eventually, the trial court entered the order described above. This appeal followed.

On appeal, Mother presents the following questions for our consideration, which we have reproduced verbatim but reordered for ease of disposition:

> I. Whether the trial court erred by not answering its reasoning behind the Order of November 17, 2011 in its required 1925(a) statement?
>
> II. Whether the trial court erred in entertaining a Motion by opposing counsel in Motion Court on a date when it had no jurisdiction (October 25, 2011) by virtue of the pending appeal at 63 WDA 2011?

[2] The protracted history of this matter appears in a previous Superior Court memorandum. ***Van Tassel v. Van Tassel***, 63 WDA 2011, 34 A.3d 225 (Pa. Super. filed September 13, 2011) (unpublished memorandum), *appeal denied*, 42 A.3d 1061 (Pa. 2012).

III. Whether the trial court erred by not giving "notice" to Appellant that her appeal was not an "automatic stay" governed by Pa.R.A.P. 1701(a), i.e., no notice equates to no due process? Appellant was also proceeding under IFP status.

IV. Whether the trial court erred in "sentencing" Appellant to a "fixed, determinate sentence of 90 days" for so-called "civil contempt" without any procedural safeguards?

V. Whether the trial court erred in ordering Appellant to "jail" for a "fixed, determinate sentence of 90 days" absent jurisdiction, without an evidentiary hearing, and without regard to the Supremacy clause that states once a money judgment is awarded, the proper means of collecting that judgment is through execution – not the inherent powers of contempt of the court?

VI. Whether the trial court erred in "awarding a money judgment" from Motion Court at a time when it was absent jurisdiction and an evidentiary hearing was necessary? Again, no notice equates to no due process.

VII. Whether the trial court erred in awarding additional attorneys' fees from Motion Court, absent jurisdiction, and without an evidentiary hearing on the matter?

Mother's Brief at 3-4.

We begin with Mother's challenge to the trial court's failure to file a substantive opinion because it concluded that she waived all of her issues. Mother's Brief at 25. The trial court directed Mother to file a statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Certified Record No. 139. In response to the trial court's Rule 1925(a) order, Mother filed a *pro se* statement despite the fact that she had counsel. Certified Record No. 145. The trial court forwarded the *pro se* filing to Mother's

attorney of record with instructions to take whatever steps counsel deemed appropriate regarding said document. Certified Record No. 151. Without acting on Mother's *pro se* statement of errors, counsel sought and received permission from the trial court and this Court to withdraw his representation of Mother. Order of Court, 5/9/12; Order of Superior Court, 5/10/12. Thereafter, the trial court found, since the time of counsel's withdrawal, that it had not received any document purporting to be a concise statement of errors. Therefore, it concluded that Mother "has waived all issues on appeal." Trial Court Opinion, 12/11/12, at 2 (citing ***Commonwealth v. Carpenter***, 955 A.2d 411, 415 (Pa. Super. 2008)). Consequently, the trial court did not provide a substantive analysis of Mother's issues in its Rule 1925(a) opinion to this Court.

We acknowledge that failure to file a statement of errors results in waiver of any issues. ***See*** Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."). Here, the trial court declared that it could not consider a *pro se* filing from a party represented by counsel and admonished counsel for failing to file a statement of errors. N.T., 3/6/12, at 4-5. Although we understand the trial court's rationale, we do not agree with its disposition under the particular circumstances of this case. Mother filed a timely Rule 1925(b) statement, which sufficiently preserved the

issues presented on appeal. The trial court acknowledged Mother's *pro se* filing and advised counsel that he was responsible, as counsel of record, to comply with Rule 1925(b) until he was removed. ***Id.*** The court also expressed reservations about letting counsel withdraw. ***Id.*** at 27–29. Eventually, however, counsel was permitted to withdraw without acting on the *pro se* statement. Thus, rather than punish Mother for counsel's failure to act before withdrawing, where she preserved her issues *pro se*, we shall review them.

Next, we address Mother's claim that the trial court erred in entertaining Father's motion on October 25, 2011 when, Mother contends, it had no jurisdiction because Mother's appeal at 63 WDA 2011 was pending. The appeal at 63 WDA 2011 was from an order finding Mother in contempt and awarding counsel fees to Father. ***Van Tassel v. Van Tassel***, 63 WDA 2011, 34 A.3d 225 (Pa. Super. filed September 13, 2011) (unpublished memorandum), *appeal denied*, 42 A.3d 1061 (Pa. 2012) ("***Van Tassel***").

Initially, we observe that nowhere on the docket or in the record for this case is there a motion by Father or an order of court dated or docketed on October 25, 2011. With regard to Mother's appeal at 63 WDA 2011, a panel of this Court affirmed the trial court order on September 13, 2011. ***Van Tassel***, slip op. at 1. Mother filed an application for reargument on September 26, 2011, which this Court denied. Order *Per Curiam*, 11/22/11.

While Mother's application for reargument was pending, Father filed a motion to impose sentence on November 17, 2011, which the trial court granted on the same day. Order of Court, 11/17/11. Based on the foregoing, we conclude that Mother's jurisdictional challenge relates to the November 17, 2011 order, from which the appeal at hand arose.

Pursuant to Pa.R.A.P. 1701(b)(2), the authority of a trial court after an appeal has been taken includes the authority to "(e)nforce any order entered in the matter...." Pa.R.A.P. 1701(b)(2). For example, in ***Glynn v. Glynn***, 789 A.2d 242 (Pa. Super. 2001), we affirmed the trial court's disposition of a motion for contempt filed by the Mother after the Father had filed a notice of appeal. Similarly, we conclude in the case *sub judice* that, even though Mother's appeal at 63 WDA 2011 was pending, the trial court had the authority to enforce its earlier contempt orders and enter the November 17, 2011 order imposing jail time, entering judgment, and awarding additional attorneys' fees. Pa.R.A.P. 1701(b)(2); ***Glynn***. Mother's contrary claim fails.[3]

---

[3] Given the history of this case, Mother could have foreseen the outcome of this issue, as she had been in this position before:

> Essentially, it appears that Mother is challenging any and all attempts by the trial court to enforce contempt orders against her alleging that those orders are derived from null and void orders. Mother's claim, however, has previously been raised and addressed by this Court. In our decision, dated May 26, 2010, we determined that the June, 23, 2008 and the November 30, 2009 orders were valid and "that the trial court properly

In her third issue, Mother complains that the trial court did not give her notice that her appeal at 63 WDA 2011 was not an "automatic stay" governed by Pa.R.A.P. 1701(a). Pa.R.A.P. 1701(a) provides as follows: "Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter." In contrast, the stay under Pa.R.A.P. 341(c) is definite in period; it is terminated as a matter of law after thirty days. Furthermore, the trial court has the power to end the stay at any time prior to thirty days by simply ruling on the application. Pa.R.A.P. 341(c)(3). Consequently, there is no danger that an applicant can use the stay application procedure as a means to frustrate the power of the trial court. ***Roth Cash Register Co., Inc. v. Micro Systems, Inc.***, 868 A.2d 1222, 1226 (Pa. Super. 2005).

We have addressed the relationship between a Rule 341 stay and the trial court's Rule 1701 authority pending appeal as follows:

> It is also important to note that Rule 1701(a) does not use the word "stay". However, the word "stay" is used in other areas of Chapter 17 of the Rules of Appellate Procedure. In the subsection that explains how to obtain the stay or *supersedeas* mentioned in Rule 1701(b)(2), the Rules state that an

---

> possessed jurisdiction over this matter at all times." ***Van Tassel v. Van Tassel***, No. 2137 WDA 2009 at 8-9 (unpublished memorandum) (Pa. Super. Filed May 26, 2010). Thus, Mother cannot now under the guise of an appeal from a subsequent contempt order continue to challenge the underlying orders.

Van Tassel, slip op. at 10–11.

> "[a]pplication for a stay of an order of a lower court pending appeal ... must ordinarily be made in the first instance to the lower court ...." Pa.R.A.P., Rule 1732(a), 42 Pa.Cons.Stat.Ann. The use of the word "stay" in this context clearly demonstrates that the rule-makers did not want to confuse the concept of a "stay" with the result intended by Rule 1701(a).
>
> We conclude that the choice of language used in Rule 1701(a) was intentional. The rule-makers avoided the word "stay" precisely because they did not intend for an appeal to act as a "stay". They intentionally used other language to describe the effect an appeal would have on the lower court's jurisdiction. In contrast, the use of the word "stay" in Rule 341(c) indicates that all proceedings in a matter must be halted or postponed while an application for determination of finality is pending before the trial court.

Roth Cash Register, 868 A.2d at 1226–1227.

In short, Pa.R.A.P. 1701(b)(2) authorizes a trial court to enforce any prior order after an appeal has been taken. ***Accord Glynn***, 789 A.2d at 245–246 (affirming trial court's finding of contempt and imposition of sanctions based on motion for contempt filed by wife after husband filed notice of appeal). Here, while Mother's appeal at 63 WDA 2011 was pending, the trial court entered the November 17, 2011 order to enforce its prior order of December 21, 2010, with which Mother failed to comply. Thus, Mother's reliance on Rule 1701(a) is misplaced, and she is not entitled to relief.

In her fourth and fifth issues, Mother challenges the civil contempt sentence of incarceration for ninety days. According to Mother, the trial court ignored procedural safeguards, sentenced her according to criminal

contempt standards, imposed unauthorized sentences of "ROR bail" and intermediate punishment, *i.e.*, house arrest with electronic monitoring, and awarded attorneys' fees instead of imposing a fine. Mother's Brief at 19. Additionally, Mother claims the trial court "faked and forged criminal charges on a miscellaneous docket, released [Mother] on 'bail' when there is no 'bail' provision for civil contempt," and later expunged the charges by order of March 7, 2012, "yet said order is mysteriously absent from the docket entries submitted to this [C]ourt for review." Mother's Brief at 23. We discern no error.

"The purpose of a civil contempt order is to coerce the contemnor to comply with a court order." ***Orfield v. Weindel***, 52 A.3d 275, 278–279 (Pa. Super. 2012). Punishment for contempt in support actions is governed by 23 Pa.C.S.A. § 4345, which provides as follows:

> **(a) General rule.**—A person who willfully fails to comply with any order under this chapter, except an order subject to section 4344 (relating to contempt for failure of obligor to appear), may, as prescribed by general rule, be adjudged in contempt. Contempt shall be punishable by any one or more of the following:
>
> > (1) Imprisonment for a period not to exceed six months.
> >
> > (2) A fine not to exceed $1,000.
> >
> > (3) Probation for a period not to exceed one year.
>
> (b) **Condition for release.—**An order committing a defendant to jail under this section shall specify the condition the fulfillment of which will result in the release of the obligor.

The feature in section (b) is typical of civil contempt orders, which must contain "conditions on the sentence so as to permit the contemnor to purge himself; he must be allowed to carry the keys to the jail in his pocket." ***Markey v. Marino***, 521 A.2d 942, 945 (Pa. Super. 1987).

Here, as set forth in the December 21, 2010 order and confirmed in the November 17, 2011 order, Mother was sentenced to less than six months of imprisonment, no fine was imposed, and she was given the opportunity to remove the sanction of incarceration by paying the court-ordered sums. Thus, we conclude that the trial court's order was proper. 23 Pa.C.S.A. § 4345.

With regard to the alleged "fake" and "forged" criminal charges, the trial court explained the confusion and its resolution as follows:

> I do want to say one thing that has come to my attention over the matters. One thing I, at some point, couldn't perceive and understand and only recently have I, and that was that there was an allegation of some kind of criminal docketing that was going on. [Mother] had put that in, and I couldn't understand that.
>
> * * *
>
> And I have now, I think, found out what that is, and that is arising, apparently, when [Mother] was placed on electronic monitoring, in order to do that, I'm told that they filed a bailpiece on her under a provision, I think, that encompassed something under the PFA statute or something, I'm not sure, but it was under 23 — I think it was 61 something, the statute.
>
> * * *

> And I noticed that very prominently my name was stamped. I was not aware of that, and apparently that was something that I'm told was necessary in order to get the monitoring. The monitoring has been lifted. There is, in effect, no bail here for this woman. I do think when I reviewed it, I restricted her now to the Commonwealth of Pennsylvania. I only think that that's necessary.
>
> What I'm saying is, seeing this document in this case, it's not appropriate at all, and I'm going to issue an appropriate order, whatever I do here today, taking this out.

N.T., 3/6/12, at 23–25.

Upon review, we conclude that Mother's fake-and-forged-charges argument is belied by the record. Following a hearing on March 6, 2012, the trial court entered an order removing "the requirement contained in [the January 4, 2012] Order that [Mother] remain on ROR and not leave the Commonwealth of Pennsylvania without prior Order of Court." Order of Court, 3/8/12. The order appears on the docket and in the record. Docket Entry 152; Certified Record No. 152. Therefore, Mother's contrary claim does not warrant relief.

Mother's sixth complaint is that the trial court erred in awarding a money judgment at a time when the trial court lacked jurisdiction and without conducting an evidentiary hearing. Mother's Brief at 21. We note, however, that Mother cites no authority and does not develop her argument with legal analysis in violation of Pa.R.A.P. 2119.

Where a party raises an issue in her appellate brief, failure to develop argument or cite to any pertinent authority in support of argument is a

violation of Pa.R.A.P. 2119. ***Hayward v. Hayward***, 868 A.2d 554 (Pa. Super. 2005). When an issue is not developed in an appellate brief, it will be deemed waived. ***Keller v. Mey***, 67 A.3d 1, 7 (Pa. Super. 2013) (citation omitted). "It is not the duty of the Superior Court to scour the record and act as the appellant's counsel, and we decline to do so." ***Dudas v. Pietrzykowski***, 813 A.2d 1, 5 (Pa. Super. 2002).[4] Because Mother's lack of argument and citation to authority hampers our review, this issue is waived. To the extent Mother complains that the trial court lacked jurisdiction to enter the November 17, 2011 order, we previously concluded that such a claim lacks merit. Furthermore, we discern no other meritorious argument related to Mother's sixth issue.

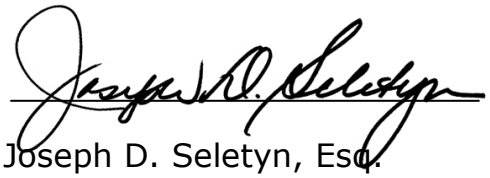
We observe that Mother's final issue, concerning the award of additional attorneys' fees, does not appear in the argument section of her appellate brief. Thus, the issue is abandoned. ***See Sternlicht v. Sternlicht***, 822 A.2d 732, 736 n.3 (Pa. Super. 2003) ("Mother originally sought removal of Father as custodian of the account but does not argue that issue on appeal. We, thus, treat the issue of Father's removal as abandoned.").

[4] We remind Mother that "a pro se litigant is 'not entitled to any particular advantage because [she] lacks legal training…,' [and] any layperson choosing to represent [her]self in a legal proceeding must, to some reasonable extent, assume the risk that [her] lack of expertise and legal training will prove [to be her] undoing." ***Warner v. University of Pennsylvania Health System***, 874 A.2d 644, 648 (Pa. Super. 2005).

Based on the foregoing, we conclude that Mother's issues do not warrant relief. Thus, we affirm the trial court's November 17, 2011 order.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/9/2013